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STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

S.B. No. 1154 – AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE

JUDICIARY COMMITTEE

April 1, 2013

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on S.B. 1154, An Act Concerning the Accidental Failure of Suit Statute. Our comments are provided on behalf of the member companies of PCI, a national property casualty trade association with over 1,000 member companies. PCI member companies provide 43 percent of Connecticut's property/casualty insurance coverage.

PCI opposes this legislation because it represents yet another attempt to weaken the provisions of Public Act 05-275 which were enacted in 2005 to reduce the filing of non-meritorious medical malpractice claims. Public Act 05-275 has been effective in reducing non-meritorious medical malpractice litigation in Connecticut and the substantial costs and burdens associated with the filing of such litigation and this bill would reduce the effectiveness of the Act.

The Connecticut Supreme Court ruled in *Plante v. Charlotte Hungerford Hospital* (12 A.3d 885) that the Accidental Failure of Suit Statute was not available to allow a plaintiff to bring a subsequent medical malpractice action when a prior action was dismissed for failure to provide the required opinion letter when the failure to comply with the opinion letter requirement was the result of egregious conduct or gross negligence on the part of the plaintiff or his attorney. This bill would remove the egregious conduct or gross negligence requirement and would allow the Accidental Failure of Suit Statute to be utilized to give plaintiffs a second chance any time they fail to comply with the Certificate of Merit Statute. This change would greatly reduce the effectiveness of requiring the timely filing of these opinions in reducing non-meritorious claims because failure to comply with such requirements could easily be cured via the Accidental Failure of Suit Statute, even in cases of egregious conduct or gross negligence on the part of the plaintiff or his attorney.

Current law already authorizes resort to the Accidental Failure to File Suit Statute when the failure to provide the required opinion letter in a medical malpractice action was the result of mistake or excusable neglect, thereby already providing the Court with sufficient authority to allow the statute to be utilized under appropriate circumstances. This bill, however, would remove the current reasonable limits on the use of the Accidental Failure to File Suit Statute and would require Connecticut Courts to give plaintiffs and their attorneys a free pass for egregious conduct or gross negligence. Not only does this seem inequitable and contrary to common sense, but it will reduce

the effectiveness of the Certificate of Merit Statute in reducing non-meritorious claims and the significant costs associated with non-meritorious medical malpractice litigation.

For all of the foregoing reasons, PCI urges your Committee not to favorably advance SB 1154.